

ORIGINAL

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

SEP 27 2010

Stephan Harris, Clerk
Cheyenne

CHRISTOPHER A. CROFTS
United States Attorney
JOSEPH H. AZBELL
Assistant United States Attorney
United States Attorney's Office
For the District of Wyoming
2120 Capitol Avenue, 4th Floor
Cheyenne, Wyoming 82001
Telephone: (307) 772-2124
Facsimile: (307) 772-2123
Email: joseph.azbell@usdoj.gov

NANCY E. GRIFFITHS, IN Bar #19498-64-A (*Pro Hac Vice Pending*)
SALLY C. SHANLEY, AZ Bar #012251 (*Pro Hac Vice Pending*)
U.S. Equal Employment Opportunity Commission
Phoenix District Office
3300 N. Central Avenue, Suite 690
Phoenix, Arizona 85012
Telephone: (602) 640-4632
Facsimile: (602) 640-5009
Email: nancy.griffiths@eeoc.gov
sally.shanley@eeoc.gov

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

KINDRED NURSING CENTERS WEST,
LLC d/b/a MOUNTAIN TOWERS
HEALTHCARE AND REHABILITATION
CENTER,

Defendant.

CIVIL NO. 10-CV-207-F

**COMPLAINT - TITLE VII
JURY TRIAL DEMAND**

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a against Defendant Kindred Nursing Centers West, LLC

doing business as Mountain Towers Healthcare and Rehabilitation Center (“Defendant” or “Mountain Towers”), to correct unlawful employment practices on the basis of sex and pregnancy and to provide appropriate relief to Charging Party Jamie Martinez, who was adversely affected by such practices. As alleged with more particularity below, Plaintiff Equal Employment Opportunity Commission (“Plaintiff” or “EEOC”) alleges that Defendant discriminated against the Charging Party by disciplining and discharging her because of her sex, female, and pregnancy.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-5(f)(1) and (3); and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The employment practices alleged to be unlawful were and are being committed within the jurisdiction of the United States District Court for the District of Wyoming.

PARTIES

3. Plaintiff, the EEOC, is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. 2000e-5 (f)(1) and (3).

4. At all relevant times, Defendant Kindred Nursing Centers West, LLC d/b/a Mountain Towers Healthcare and Rehabilitation Center has continuously been a Wyoming

corporation doing business in the State of Wyoming and the City of Cheyenne, and has continuously had at least 15 employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

(Discipline and Discharge Because of Pregnancy)

6. More than thirty days prior to the institution of this lawsuit, Jamie Martinez filed a charge of discrimination with the EEOC alleging violations of Title VII by Defendant Mountain Towers. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least January 2008, Defendant has engaged in unlawful employment practices in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by disciplining Ms. Martinez because of her sex, female, and pregnancy. Facts supporting this claim include, but are not limited to:

- a. On or around May 8, 2007, Jamie Martinez was hired as a full time nurse by Defendant.
- b. On or around July 30, 2007, Jamie Martinez was promoted to the position of Clinical Liaison/Admissions Coordinator by Defendant.
- c. On or around January 8, 2008, Ms. Martinez informed Defendant that she was pregnant.

d. Within days after being informed of Ms. Martinez's pregnancy, Defendant, for the first time, disciplined Ms. Martinez for performance issues which were in large part beyond her control. Defendant knew these issues were beyond her control.

8. Since at least February 8, 2008, Defendant has engaged in unlawful employment practices in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) by terminating Ms. Martinez's employment on February 8, 2008, because of her sex, female, and pregnancy.

9. The effect of the practices complained of in paragraphs 7 and 8 above has been to deprive Jamie Martinez of equal employment opportunities and otherwise adversely affect her status as an employee because of her sex, female, and pregnancy.

10. The unlawful employment practices complained of above were intentional.

11. The unlawful employment practices complained of above were done with malice and/or reckless indifference to the federally protected rights of Jamie Martinez.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from engaging in discrimination on the basis of sex or pregnancy.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for female and pregnant employees and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make whole Jamie Martinez, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement of Charging Party Jamie Martinez to the position of Clinical Liaison/Admissions Coordinator, with all attendant rights and benefits, or front pay in lieu thereof.

D. Order Defendant to make whole Jamie Martinez, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above, including wages, benefits, and job search expenses, in amounts to be determined at trial.

E. Order Defendant to pay Jamie Martinez for past and future nonpecuniary losses resulting from the unlawful practices described above, including, but not limited to emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in an amount to be determined at trial.

F. Order Defendant to pay Jamie Martinez punitive damages for its malicious and reckless conduct described above, in an amount to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND


The Commission requests a jury trial on all questions of fact raised by its complaint.

Dated this 27th day of September, 2010.

Respectfully submitted,

CHRISTOPHER A. CROFTS
United States Attorney

By:


JOSEPH H. AZBELL
Assistant United States Attorney
United States Attorney's Office
P.O. Box 668
Cheyenne, WY 82003-0668
Telephone: (307) 772-2124

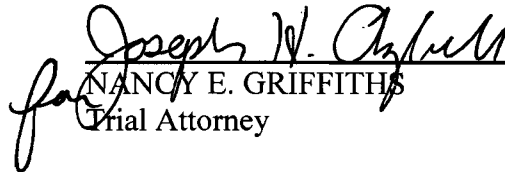
P. DAVID LOPEZ
General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
131 M Street NE, 5th Floor
Washington, D.C. 20507-0004

MARY JO O'NEILL
Regional Attorney

SALLY C. SHANLEY
Supervisory Trial Attorney


NANCY E. GRIFFITHS
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
3300 N. Central Avenue, Suite 690
Phoenix, Arizona 85012
Telephone: (602) 640-4632

Attorneys for Plaintiff

NOTE: It is sufficient for service on the EEOC that pleadings, notices, and any other court documents be served on the Trial Attorneys. Duplicate service is not required on the General Counsel and Associate General Counsel in Washington, D.C.